

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition Filed by Vermont Department )  
of Public Service Re: Energy Efficiency Utility Structure )

Order entered: 1/22/2009

**ORDER RE MOTION TO INTERVENE**

At the October 1, 2008, prehearing conference in this Docket, the Public Service Board ("Board") raised the issue of Vermont Energy Investment Corporation's ("VEIC") possible participation in this proceeding. The Board noted that participation options could include party status or amicus status. VEIC currently serves under contract to the Board as the Efficiency Vermont provider. The Board recognized that VEIC has operational expertise that would be helpful in this proceeding, but because VEIC is the Board's contractor, there is the potential for confusion about its role. The attendees expressly agreed that VEIC could participate in the settlement negotiations while its motion to intervene was pending.

On October 8, 2008, VEIC filed a motion to intervene in this Docket, pursuant to Board Rule 2.209. In our October 8, 2008, Prehearing Conference Memorandum and Scheduling Order, the Board established the same deadline for VEIC to file a motion to intervene as for other entities, but we determined that responses to a motion by VEIC would not be due until the conclusion of the period for settlement negotiations on December 1, 2008.

On December 8, 2008, the Department of Public Service ("Department") filed comments supporting VEIC's participation in an amicus role. The Department raises concerns that VEIC's participation as a party could potentially pose a conflict of interest because VEIC is the current contractor, as well as a likely candidate to continue as the Efficiency Vermont provider either under future contracts or the proposed alternative "order of appointment" structure.

On December 10, 2008, Conservation Law Foundation ("CLF") filed comments supporting VEIC's participation as a party. In response to the Department's filing on VEIC's participation, CLF maintains that the Department has failed to identify a conflict and that the same possibility of a potential and unidentified conflict would exist to any utility's participation in its own rate case.

On December 11, 2008, VEIC filed comments noting that the Department's response does not challenge or oppose the basis of VEIC's motion to intervene. Similar to CLF's comments, VEIC stated that the Department failed to identify a conflict of interest and that VEIC sees its position as being similar to that of utilities participating in their own rate cases or Vermont utilities' participation in a docket considering the restructuring of the utility industry.

The Board concludes that VEIC has demonstrated a sufficient basis to support its permissive intervention in this proceeding pursuant to Board Rule 2.209(B).

Turning to the question of whether there is a potential conflict if VEIC participates as a party, we conclude that there is no significant potential for a conflict as long as VEIC itself pays the costs of its participation. The motion seeks intervention for VEIC itself, not in its role as the Board's Efficiency Vermont contractor, with VEIC intervening to protect its own interests. Such intervention by VEIC on behalf of its own interests is expressly allowed, with prior Board approval, under the contract that governs VEIC's work as the Energy Efficiency Utility ("EEU").<sup>1</sup>

A significant potential for a conflict could arise, however, were VEIC's intervention as VEIC to be funded not by VEIC but instead by EEU funds. In that case, the Board would be paying, with EEU funds, for VEIC to advance VEIC's interests (including a possible appeal of any final Board order), which may or may not coincide with the interests of the EEU.<sup>2</sup>

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1. "The Contractor, as VEIC, may not become a formal party to any Board proceedings that directly relate to the EEU's operation without the prior approval of the Board." Vermont-VEIC Contract for EEU, § 24.

2. Given that VEIC serves as the Board's contractor for Efficiency Vermont, the Board does not agree with CLF and VEIC's contention that VEIC's participation is similar to a Vermont utility, which does not operate under a contract with the Board. While the Board may ultimately adopt a utility-type structure for the EEU, that is not the current structure.

Given that VEIC is intervening as VEIC, and not in its role as the Energy Efficiency Utility, VEIC will bear the costs of its participation, rather than being financed through the Energy Efficiency Utility fund.

We grant VEIC intervention on a permissive basis, with VEIC to bear its own costs for its participation in this proceeding.<sup>3</sup>

**So ORDERED.**

Dated at Montpelier, Vermont, this 22<sup>nd</sup> day of January, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: January 22, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

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3. There is no need to address VEIC's requests to intervene as of right, given that we are granting it permissive intervention.